

ESTTA Tracking number: **ESTTA712505**Filing date: **12/03/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	NutraMarks, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1500 Kearns Boulevard Park City, UT 84060 UNITED STATES		

Attorney information	Nadya Davis Holland & Hart LLP P.O. Box 8749 __ Attn: Trademark Docketing Denver, CO 80201 UNITED STATES docket@hollandhart.com, ncdavis@hollandhart.com, ej-cooper@hollandhart.com, tgetzoff@hollandhart.com, mamooore@hollandhart.com
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Registration Subject to Cancellation

Registration No	3935337	Registration date	03/22/2011
Registrant	AFFORDABLE NATURALS, LLC 6401 W. 106TH STREET BLOOMINGTON, MN 55438 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2009/08/01 First Use In Commerce: 2009/08/01

All goods and services in the class are cancelled, namely: personal care products, namely, lip balm, lip shimmers and sun block preparations

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Related Proceedings	91218720
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86078760	Application Date	09/30/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SIMPLERS		

Design Mark	<h1>SIMPLERS</h1>
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 1983/09/01 First Use In Commerce: 1983/09/01 cosmetic preparations, namely, essential oils for personal use and aromatherapy; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils</p> <p>Class 005. First use: First Use: 1983/09/01 First Use In Commerce: 1983/09/01 Dietary and nutritional supplements; herbal products, namely, herbal supplements and medicinal herbal extracts sold as a component ingredient of dietary and nutritional supplements, and liquid herbal supplements sold as a component ingredient of dietary and nutritional supplements that aid in sleep, relaxation and wellness</p>

U.S. Registration No.	4647662	Application Date	09/30/2013
Registration Date	12/02/2014	Foreign Priority Date	NONE
Word Mark	SIMPLERS BOTANICALS		
Design Mark	<h2>SIMPLERS BOTANICALS</h2>		
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1983/09/01 First Use In Commerce: 1983/09/01 cosmetic preparations, namely, essential oils for personal use and aromatherapy; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils</p>		

	Class 005. First use: First Use: 1983/09/01 First Use In Commerce: 1983/09/01 dietary and nutritional supplements; herbal products, namely, herbal supplements, medicinal herbal extracts sold as a component ingredient of dietary and nutritional supplements, and liquid herbal supplements sold as a component ingredient of dietary and nutritional supplements that aid in sleep, relaxation and wellness
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U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	SIMPLERS		
Goods/Services	advertising, promotion, and sale of cosmetic personal care and health and beauty products		

Attachments	86078760#TMSN.png(bytes) 86078793#TMSN.png(bytes) Petition for Cancellation __ SIMPLY.pdf(2327322 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nadya Davis/
Name	Nadya Davis
Date	12/03/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NutraMarks, Inc., Petitioner, v. Affordable Naturals, LLC, Respondent.	Cancellation No.: Mark: SIMPLY Reg. No.: 3935337
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PETITION FOR CANCELLATION

NutraMarks, Inc. (“Petitioner”), a Delaware corporation having a principal place of business at 1500 Kearns Boulevard, Park City, Utah, 84060, believes that it is and will continue to be damaged by the continuing registration by Affordable Naturals, LLC (“Respondent”), a Minnesota limited liability company with its principal place of business at 6401 W. 106th Street, Bloomington, Minnesota, 55438, of the trademark SIMPLY (“Respondent’s Mark”) as shown in Registration No. 3935337 (“Respondent’s Registration”) and hereby petitions for cancellation of the same. As grounds for its Petition for Cancellation, Petitioner alleges that, upon actual knowledge with respect to itself and its own actions, and upon information and belief as to other matters:

Petitioner Enjoys Senior Rights in its SIMPLERS Trademarks

1. Petitioner, through its parent company Nutraceutical Corporation and its related companies, manufactures, distributes, and sells a wide variety of nutritional and dietary supplements, cosmetic products, personal care products, and therapeutic topical products in health and natural food stores and similar outlets nationwide.

2. Since at least as early as 1983, Petitioner and its predecessor-in-interest, Simplers Botanical Company, LLC, have used the term SIMPLERS as a trademark throughout the United

States in connection with the advertising, promotion, and sale of cosmetic personal care and health and beauty products.

3. By virtue of its nationwide, continuous use of the SIMPLERS mark, Petitioner and its predecessor-in-interest obtained nationwide common law rights to the SIMPLERS mark throughout the United States by at least as early as 1983.

4. On September 30, 2013, Petitioner filed an application to register the mark SIMPLERS for “*cosmetic preparations, namely, essential oils for personal use and aromatherapy use; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils*” in International Class 3 (Serial No. 86078760) (“Petitioner’s Application”).

5. Petitioner also owns United States Registration No. 4647662 for SIMPLERS BOTANICALS covering “*cosmetic preparations, namely, essential oils for personal use and aromatherapy use; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils*” in International Class 3 (“Petitioner’s Registration”).

6. Petitioner’s Registration, which matured on December 2, 2014 and enjoys an actual first use date of September 1, 1983 and a constructive use date of September 30, 2013, is valid and subsisting and constitutes *prima facie* evidence of the validity of the mark and

registration, and of Petitioner's ownership of and exclusive right to use the mark in connection with the goods set forth in the registration.

7. Petitioner's common law and federal registration rights in the marks set forth above are herein collectively referred to as "Petitioner's Marks."

8. Petitioner and its predecessor-in-interest have expended considerable effort and expense advertising, marketing, and promoting Petitioner's Marks throughout the United States. Consequently, Petitioner possesses and enjoys considerable goodwill in Petitioner's Marks.

9. Upon information and belief, all of Petitioner's Marks have been in use in the United States in connection with the marketing and sale of cosmetic personal care and health and beauty products well prior to the registration date and alleged date of first use in Respondent's Registration.

Respondent Admits Confusion is Likely with its Junior SIMPLY Trademark

10. On November 24, 2009, Respondent filed an application to register Respondent's Mark SIMPLY for "*personal care products, namely lip balm, lip shimmers and sun block preparations*" in International Class 3. The application matured to a registration on March 22, 2011 and was assigned Registration Number 3935337.

11. Upon information and belief, Respondent did not notify the Examining Attorney of Petitioner's Marks and the Examining Attorney did not take Petitioner's Marks into consideration when reviewing Respondent's application to register Respondent's Mark.

12. On October 7, 2014, based on Respondent's Registration, Respondent filed a Notice of Opposition to Petitioner's Application before the Trademark Trial and Appeal Board (Opposition No. 91218720) ("the Opposition").¹

¹ Contemporaneously with this Petition for Cancellation, Petitioner will file a notification in Opposition No. 91218720 regarding this related proceeding.

13. In the Opposition, Respondent affirmatively asserted that Petitioner's "Simplers mark for cosmetic preparations so resembles [Respondent's] registered SIMPLY mark as to be likely to cause confusion, mistake, or deception, and is therefore precluded from registration under Section 2(d) of the Lanham Act, 15 U.S.C. 1052(d)." Opposition, ¶8 (attached as **Exhibit 1**).

14. On October 16, 2015, in related litigation between the two parties, *Nutraceutical Corp. and Nutramarks, Inc. v. Affordable Naturals, LLC*, 2:14-cv-00907-JNP-PMS (D. Minn, 2014), Respondent likewise asserted that a likelihood of confusion exists between Respondent's use of SIMPLERS and Petitioner's use of SIMPLY. See Amended Answer and Amended Counterclaims for Trademark Infringement, ¶¶ 18, 40 of Amended Counterclaims (attached as **Exhibit 2**).

15. Respondent made its admissions that a likelihood of confusion exists in full view of Petitioner's claimed first use date of 1983 for Petitioner's Marks, which is stated in Petitioner's Application and predates Respondent's first alleged use in commerce by approximately twenty-six (26) years.

16. Petitioner is concerned that Respondent's Registration will pose an obstacle to maturation of Petitioner's Application to registration, despite the fact that Petitioner enjoys senior rights in Petitioner's Marks and Respondent has affirmatively admitted that a likelihood of confusion exists between Petitioner's Marks and Respondent's Mark.

17. Petitioner is also concerned that, when used in connection with the goods set forth in Respondent's Registration, Respondent's Mark is confusingly similar to Petitioner's prior used Marks.

18. Respondent filed and obtained a registration for Respondent's Mark without Petitioner's consent or permission.

COUNT I
Likelihood of Confusion
(15 U.S.C. § 1052(d))

19. Petitioner realleges and incorporates by reference the preceding allegations of its Petition for Cancellation.

20. Petitioner is the senior user of Petitioner's Marks in connection with sales and marketing in commerce for the goods set forth above.

21. As has already been admitted to by Respondent, Respondent's Mark so closely resembles Petitioner's Marks as to be likely, when used in connection with the goods and services set forth in Respondent's Registration, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), such that continued registration of Respondent's Mark is resulting in damage to Petitioner.

WHEREFORE, Petitioner respectfully requests that Respondent's Registration be cancelled.

The filing fee in the amount of \$300 is being transmitted electronically with this submission. Any deficiency in the fee should be charged to Deposit Account No. 08-2623.

December 3, 2015

Respectfully submitted,

/Nadya Davis/

Timothy P. Getzoff
Nadya C. Davis
Emily J. Cooper
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Denver, Colorado 80201-8749
Phone: (303) 473-4822

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ncdavis@hollandhart.com
ejcooper@hollandhart.com

Attorneys for Petitioner NutraMarks, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation has been served on December 3, 2015, to the following by U.S. First Class Mail, postage prepaid:

Affordable Naturals, LLC
6401 W. 106th Street
Bloomington, Minnesota 55438

copy to

Carl E. Christensen
Christensen Law Office PLLC
800 Washington Ave. North Suite 704
Minneapolis, Minnesota 55401

Courtesy copy to carl@clawoffice.com

/Mark Moore/

Mark Moore

Exhibit 1

ESTTA Tracking number: **ESTTA631511**Filing date: **10/07/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Affordable Naturals, LLC		
Entity	LLC	Citizenship	Minnesota
Address	6401 W. 106th Street Bloomington, MN 55438 UNITED STATES		

Correspondence information	Carl Christensen Attorney Christensen Law Office PLLC 800 Washington Ave N Suite 704 Minneapolis, MN 55401 UNITED STATES carl@clawoffice.com Phone:612-823-4427
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Applicant Information

Application No	86078760	Publication date	09/16/2014
Opposition Filing Date	10/07/2014	Opposition Period Ends	10/16/2014
Applicant	NutraMarks, Inc. 1500 Kearns Boulevard, Suite B200 Park City, UT 84060 UNITED STATES		

Goods/Services Affected by Opposition

Class 003. First Use: 1983/09/01 First Use In Commerce: 1983/09/01

All goods and services in the class are opposed, namely: cosmetic preparations, namely, essential oils for personal use and aromatherapy use; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3935337	Application Date	11/24/2009
Registration Date	03/22/2011	Foreign Priority Date	NONE

Word Mark	SIMPLY
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 2009/08/01 First Use In Commerce: 2009/08/01 personal care products, namely, lip balm, lip shimmers and sun block preparations

Attachments	77879714#TMSN.png(bytes) Notice of Opposition.pdf(82487 bytes) Exhibits to Notice of Opposition.pdf(4294725 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/Carl E. Christensen
Name	Carl E. Christensen
Date	10/07/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Affordable Naturals, LLC, Opposer/Plaintiff, v. NutraMarks, Inc., Applicant/Defendant.	Opposition No. _____ Appln. No. 86078760 Mark: SIMPLERS
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NOTICE OF OPPOSITION

Affordable Naturals, LLC (“Opposer”), a Minnesota limited liability company, with a business address at 6401 W. 106th Street, Bloomington, MN, believes that it will be damaged by the registration of the mark that is the subject of Application No. 86078760, and hereby opposes its registration on the following grounds:

1. Opposer is the owner of Registration No. 3935337 for the mark SIMPLY as identifying personal care products, namely lip balm, issued by the Patent and Trademark Office (“PTO”) March 22, 2011 based on an application filed on November 24, 2009. As proof of status and title, attached hereto as Exhibit A, and incorporated by reference herein, are true and correct printouts of the PTO’s TARR and Assignment records for this registration.
2. Applicant filed in the PTO on September 30, 2013 Application No. 86078760 to register the mark Simplers for cosmetic preparations. *See* Application attached as Exhibit B.
3. Prior to Applicant’s filing of Application No. 86078760, Applicant knew that the mark SIMPLY to identify personal care products was in use in the United States.

4. Applicant is a Delaware corporation that produced cosmetic preparations and dietary supplements in the United States prior to the Applicant's filing of Application No. 86078760.

5. Applicant through NutraMarks, Inc. has produced and distributed in the United States the Simplers brand products. A sample of the labels used for the Simplers brand products from their trademark/service mark application are attached hereto as Exhibit B.

6. A sample of the labels used for the Simply brand personal care products are attached hereto as Exhibit C.

7. Opposer's Simply brand personal care products and Applicant's Simplers brand cosmetic preparations were both distributed to via the internet, in the United States.

8. Applicant's Simplers mark for cosmetic preparations so resembles Opposer's registered SIMPLY mark as to be likely to cause confusion, mistake or deception, and is therefore precluded from registration under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

9. If Applicant is granted registration of the Simplers mark, it would obtain a prima facie exclusive right to use of this mark that would cause damage and injury to Opposer.

WHEREFORE, Opposer respectfully requests that this opposition be granted and that Application 86078760 be denied registration.

CHRISTENSEN LAW OFFICE PLLC

Dated: October 7, 2014

By: /s/Carl E. Christensen
Carl Christensen (MN Bar # 0350412)
800 Washington Avenue North, Suite 704
Minneapolis, Minnesota 55401
(612) 823-4016
(612) 823-4777 fax
carl@clawoffice.com
Attorney for Affordable Naturals, LLC

Certificate of Service

This is to certify that a copy of the foregoing Notice of Opposition with Exhibits A-C was served on this 7th day of October 2014 by first class mail, postage prepaid, on the following as applicant's attorney of record:

Alison Pitt
Nutramarks, Inc.
1500 Kerns Blvd. Ste B200
Park City, Utah, 84060-7330

By: /s/Carl E. Christensen

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Affordable Naturals, LLC, Opposer/Plaintiff, v. NutraMarks, Inc., Applicant/Defendant.	Opposition No. _____ Appln. No. 86078760 Mark: SIMPLERS
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NOTICE OF OPPOSITION

Exhibit A



United States Patent and Trademark Office

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SIMPLY

Word Mark	SIMPLY
Goods and Services	IC 003. US 001 004 006 050 051 052. G & S: personal care products, namely, lip balm, lip shimmers and sun block preparations. FIRST USE: 20090801. FIRST USE IN COMMERCE: 20090801
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77879714
Filing Date	November 24, 2009
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	April 27, 2010
Registration Number	3935337
Registration Date	March 22, 2011
Owner	(REGISTRANT) Food Market Merchandising, Inc. CORPORATION MINNESOTA 6401 West 106th Street

Bloomington MINNESOTA 55438

(LAST LISTED OWNER) AFFORDABLE NATURALS, LLC LIMITED LIABILITY COMPANY MINNESOTA
6401 W. 106TH STREET BLOOMINGTON MINNESOTA 55438

**Assignment
Recorded**

ASSIGNMENT RECORDED

**Attorney of
Record**

Carl E. Christensen

**Type of Mark
Register**

TRADEMARK
PRINCIPAL

**Live/Dead
Indicator**

LIVE

[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)

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Mark: SIMPLY

SIMPLY

US Serial Number: 77879714
US Registration Number: 3935337
Register: Principal
Mark Type: Trademark
Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.
Status Date: Mar. 22, 2011
Publication Date: Apr. 27, 2010
Application Filing Date: Nov. 24, 2009
Registration Date: Mar. 22, 2011
Notice of Allowance Date: Jun. 22, 2010

Mark Information

Mark Literal Elements: SIMPLY
Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.
Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: personal care products, namely, lip balm, lip shimmers and sun block preparations
International Class(es): 003 - Primary Class
U.S Class(es): 001, 004, 006, 050, 051, 052
Class Status: ACTIVE
Basis: 1(a)
First Use: Aug. 01, 2009
Use in Commerce: Aug. 01, 2009

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: AFFORDABLE NATURALS, LLC
Owner Address: 6401 W. 106TH STREET
BLOOMINGTON, MINNESOTA 55438
UNITED STATES
Legal Entity Type: LIMITED LIABILITY COMPANY
State or Country Where Organized: MINNESOTA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Carl E. Christensen
Docket Number: 1004-80-14
Attorney Primary Email Address: carl@clawoffice.com
Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Carl E. Christensen
Christensen Law Office PLLC
800 Washington Ave. North

Suite 704
Minneapolis, MINNESOTA 55401
UNITED STATES

Phone: (612) 823-4016

Correspondent e-mail: carl@clawoffice.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 17, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
Sep. 17, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Sep. 10, 2014	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Mar. 22, 2011	REGISTERED-PRINCIPAL REGISTER	
Feb. 17, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE MAILED	
Feb. 16, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	70633
Feb. 15, 2011	ASSIGNED TO LIE	70633
Jan. 22, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Jan. 10, 2011	STATEMENT OF USE PROCESSING COMPLETE	66230
Dec. 08, 2010	USE AMENDMENT FILED	66230
Jan. 07, 2011	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66230
Dec. 08, 2010	TEAS STATEMENT OF USE RECEIVED	
Jun. 22, 2010	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 27, 2010	PUBLISHED FOR OPPOSITION	
Apr. 07, 2010	NOTICE OF PUBLICATION	
Mar. 19, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	74215
Mar. 19, 2010	ASSIGNED TO LIE	74215
Mar. 02, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 01, 2010	ASSIGNED TO EXAMINER	73365
Dec. 01, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 27, 2009	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 16, 2011

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: Food Market Merchandising, Inc.

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5355/0485](#)

Pages: 3

Date Recorded: Sep. 02, 2014

Supporting Documents: [assignment-tm-5355-0485.pdf](#)

Assignor

Name: [FOOD MARKET MERCHANDISING, INC.](#)

Execution Date: Aug. 28, 2014

Legal Entity Type: CORPORATION

State or Country Where
Organized: MINNESOTA

Assignee

Name: [AFFORDABLE NATURALS, LLC](#)

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where
Organized: MINNESOTA

Address: 6401 W. 106TH STREET
BLOOMINGTON, MINNESOTA 55438

Correspondent

Correspondent Name: CARL CHRISTENSEN

Correspondent Address: 800 WASHINGTON AVE N
SUITE 704
MINNEAPOLIS, MN 55401

Domestic Representative - Not Found

SIMPLY



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Affordable Naturals, LLC, Opposer/Plaintiff, v. NutraMarks, Inc., Applicant/Defendant.	Opposition No. _____ Appln. No. 86078760 Mark: SIMPLERS
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NOTICE OF OPPOSITION

Exhibit B

Trademark/Service Mark Application, Principal Register

Serial Number: 86078760

Filing Date: 09/30/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86078760
MARK INFORMATION	
*MARK	SIMPLERS
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	SIMPLERS
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	NutraMarks, Inc.
*STREET	1500 Kearns Boulevard, Suite B200
*CITY	Park City
*STATE (Required for U.S. applicants)	Utah
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	84060
PHONE	435-655-6000
EMAIL ADDRESS	legal@nutracorp.com

LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	003
* IDENTIFICATION	cosmetic preparations, namely, essential oils for personal use and aromatherapy use; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/01/1983
FIRST USE IN COMMERCE DATE	At least as early as 09/01/1983
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\860\787\86078760\xml1\APP0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\860\787\86078760\xml1\APP0004.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\860\787\86078760\xml1\APP0005.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\860\787\86078760\xml1\APP0006.JPG
	\\TICRS\EXPORT16\IMAGEOUT 16\860\787\86078760\xml1\APP0007.JPG
SPECIMEN DESCRIPTION	cosmetic preparations using essential oils for personal use with use of the mark on the front panel of the label
INTERNATIONAL CLASS	005
* IDENTIFICATION	Dietary and nutritional supplements; herbal products, namely, herbal supplements, herbal extracts and herbal tonics.
FILING BASIS	SECTION 1(a)

FIRST USE ANYWHERE DATE	At least as early as 09/01/1983
FIRST USE IN COMMERCE DATE	At least as early as 09/01/1983
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPE0-1991198551-165701079 . Simplers.BulkDisplayOptions.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\860\787\86078760\xml1\APP0008.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\860\787\86078760\xml1\APP0009.JPG
SPECIMEN DESCRIPTION	Brochure of dietary, nutritional and herbal products with use of the mark on the front panel of the labels
ATTORNEY INFORMATION	
NAME	Alison Pitt
FIRM NAME	NutraMarks, Inc.
STREET	1500 Kearns Boulevard, B200
CITY	Park City
STATE	Utah
COUNTRY	United States
ZIP/POSTAL CODE	84060
PHONE	435-655-6000
EMAIL ADDRESS	legal@nutracorp.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Stanley E. Soper
CORRESPONDENCE INFORMATION	
NAME	Alison Pitt
FIRM NAME	NutraMarks, Inc.
STREET	1500 Kearns Boulevard, B200
CITY	Park City
STATE	Utah

COUNTRY	United States
ZIP/POSTAL CODE	84060
PHONE	435-655-6000
EMAIL ADDRESS	legal@nutracorp.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	2
FEE PER CLASS	325
*TOTAL FEE DUE	650
*TOTAL FEE PAID	650
SIGNATURE INFORMATION	
SIGNATURE	/Alison Pitt/
SIGNATORY'S NAME	Alison Pitt
SIGNATORY'S POSITION	Attorney of record, UT bar member
DATE SIGNED	09/30/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 86078760

Filing Date: 09/30/2013

To the Commissioner for Trademarks:

MARK: SIMPLERS (Standard Characters, see [mark](#))

The literal element of the mark consists of SIMPLERS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, NutraMarks, Inc., a corporation of Delaware, having an address of
1500 Kearns Boulevard, Suite B200
Park City, Utah 84060
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 003: cosmetic preparations, namely, essential oils for personal use and aromatherapy use; perfume oils; non-medicated cosmetics and skin care products, namely, face and body creams, face, body and lip salves, face and body sprays, face and body balms, face and body oils, face and body liquid soaps, face and body moisturizers, face, body, and hand lotions, lip balms, shaving lotions, shaving balms, perfumes and colognes, and face and body bar soaps; hair care preparations; massage oils

In International Class 003, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 09/01/1983, and first used in commerce at least as early as 09/01/1983, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) cosmetic preparations using essential oils for personal use with use of the mark on the front panel of the label.

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

[Specimen File5](#)

International Class 005: Dietary and nutritional supplements; herbal products, namely, herbal supplements, herbal extracts and herbal tonics.

In International Class 005, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 09/01/1983, and first used in commerce at least as early as 09/01/1983, and is now in use in such commerce. The applicant is submitting one(or more)

specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Brochure of dietary, nutritional and herbal products with use of the mark on the front panel of the labels.

Original PDF file:

[SPE0-1991198551-165701079_.Simplers.BulkDisplayOptions.pdf](#)

Converted PDF file(s) (2 pages)

[Specimen File1](#)

[Specimen File2](#)

The applicant's current Attorney Information:

Alison Pitt and Stanley E. Soper of NutraMarks, Inc.
1500 Kearns Boulevard, B200
Park City, Utah 84060
United States

The applicant's current Correspondence Information:

Alison Pitt
NutraMarks, Inc.
1500 Kearns Boulevard, B200
Park City, Utah 84060
435-655-6000(phone)
legal@nutracorp.com (authorized)

A fee payment in the amount of \$650 has been submitted with the application, representing payment for 2 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Alison Pitt/ Date: 09/30/2013
Signatory's Name: Alison Pitt
Signatory's Position: Attorney of record, UT bar member
RAM Sale Number: 86078760

RAM Accounting Date: 10/01/2013

Serial Number: 86078760

Internet Transmission Date: Mon Sep 30 17:06:59 EDT 2013

TEAS Stamp: USPTO/BAS-199.119.85.51-2013093017065926

7835-86078760-50078ad57da855b7b98825b9ea

951162f86eea8361098a542c4f77d4593588861a

-CC-8749-20130930165701079886

SIMPLERS

New! Perfumery Botanicals

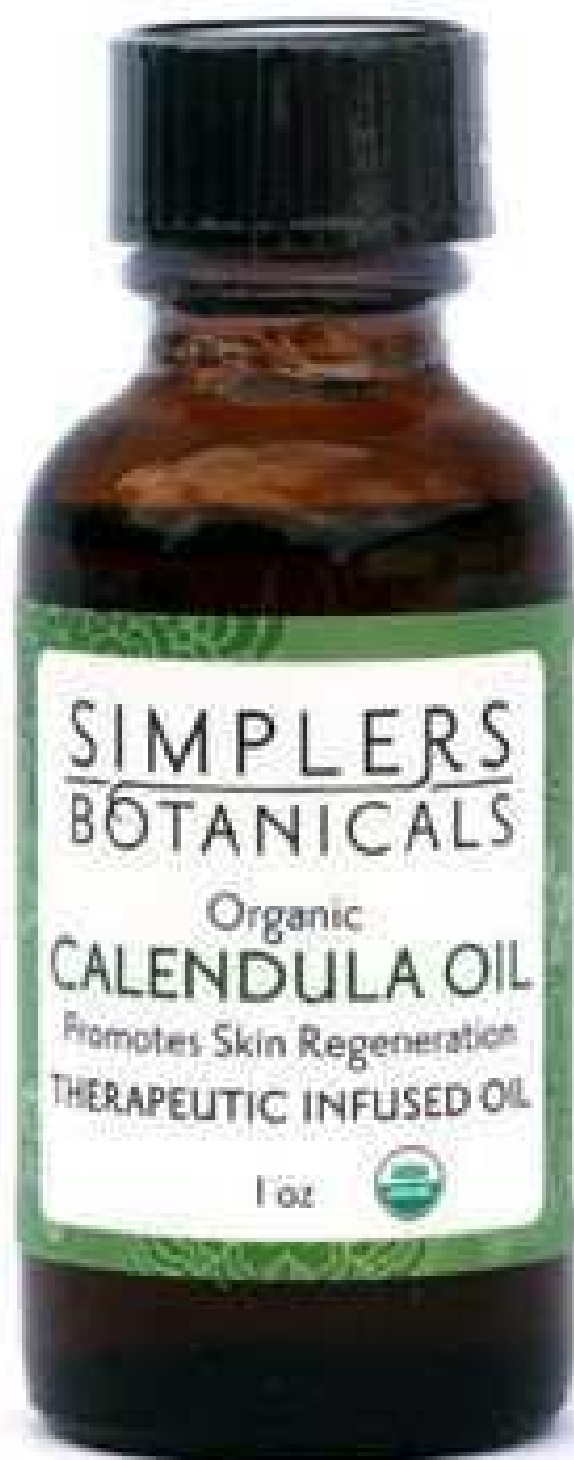




SIMPLERS
BOTANICALS

ARGAN
FACIAL TREATMENT
NEROLI & VETIVER

15ml



SIMPLERS
BOTANICALS

Organic
CALENDULA OIL

Promotes Skin Regeneration
THERAPEUTIC INFUSED OIL

1 oz







SIMPLERS
BOTANICALS

NEROLI

Citrus aurantium

THERAPEUTIC
HYDROSOL

85ml

Suggested Initial Set Up: Top 12 Bestsellers

Singles:

Kava
St. John's Wort
Echinacea
Valerian
Astragalus
Chaste Tree (Vitex)

Compounds:

Stress Relief Compound
Milk Thistle Compound
Echinacea/Goldenseal Compound
Valerian/Hops Compound
Nettle/Radish Compound
Hawthorn Compound

Why bulk extracts are the smart choice

- Free up shelf space and reduce inventory.
- Provide high quality organic extracts to customers while retaining the same profit margin as prepackaged single extracts.
- Organic Plants & Alcohol – We choose our herbs carefully, supporting organic farmers locally and worldwide and are Certified Organic by CCOF.
- Reduce waste and excess packaging.



Simplers Botanicals is an herbalist-operated company dedicated to providing highest quality organic herbal extracts. We use certified organic grain (corn) alcohol and we strive to purchase from small family farms whenever possible. All plants in our extracts are certified organic, ethically wildcrafted, or grown without chemicals. We do not use any wildcrafted herbs on the "At-Risk" list, unless they are from cultivated sources.

For more information about At-Risk plants see www.unitedplantsavers.org.

PO Box 2534, Sebastopol, CA, 95473
800-652-7646 or 707-824-5900 office@simplers.com

SIMPLERS BOTANICALS

BULK LIQUID EXTRACTS DISPLAY OPTIONS



www.simplers.com

Simplers Botanicals Bulk Liquid Extracts

Compounds

Bitters*	A reliable remedy for promoting digestion and assimilation. <i>Artichoke, Blessed Thistle, Gentian, Ginger, Chamomile, Wormwood, Dandelion Root, Fennel</i>		
Cramp**	Assists the body in relieving menstrual cramping. <i>Black Haw, Chaste Tree, Yarrow, Motherwort, Wild Yam, Blue Vervain, St. John's Wort</i>		
Dong Quai**	Supports healthy function of the female reproductive system. <i>Dong Quai, Angelica Root, Blessed Thistle, Black Cohosh, Chaste Tree, Ginger, Licorice</i>		
Echinacea/ Goldenseal*	To support the body's immune function in times of stress. <i>Echinacea and Goldenseal</i>		
Ech/Gold Glycerite	To support the body's immune function in times of stress. <i>Echinacea and Goldenseal</i>		
Eucalyptus**	An expectorating remedy to help relieve respiratory congestion. <i>Eucalyptus, Yerba Santa, Grindelia, Hyssop, Elecampane, Yerba Mansa, Licorice</i>		
Feverfew*	For tonic use as a headache remedy. <i>Feverfew, Ginkgo, Lavender, Wild Yam and Lemon Verbena</i>		
Ginkgo/ Skullcap*	For mental fatigue and nervous exhaustion. <i>Ginkgo, Skullcap, Rosemary, Gotu Kola, Fo Ti</i>		
Hawthorn*	To help nourish and tone the heart and supporting tissues. <i>Hawthorn Berry, Leaf and Flower, Motherwort and Lavender</i>		
Kava/Lavender Glycerite	To help reduce anxiety and stress. <i>Kava and Lavender</i>		
Milk Thistle**	Helps promote body system detoxification and elimination. <i>Milk Thistle, Dandelion Root, Artichoke, Oregon Grape Root</i>		
Nettle/Radish**	A seasonal tonic to help relieve hay fever and allergy symptoms. <i>Nettle, Horseradish, Elder flower, Goldenrod, Goldenseal, Turmeric, Yarrow</i>		
Saw Palmetto**	To support healthy function of the male reproductive system. <i>Saw Palmetto, Echinacea, Marshmallow, Couchgrass, Hydrangea, Licorice, Nettle Root, Oat, Jamaican Sarsaparilla, Yarrow, Buchu</i>		
Stress Relief*	To promote a sense of well being. <i>Passion Flower, Skullcap, Chamomile, Lavender, Nettle Leaf, Oat</i>		
Valerian/Hops*	Calming Sleep Aid. <i>Valerian, Hops, St. John's Wort, Catnip, California Poppy, Blue Vervain, Skullcap</i>		

Singles

Astragalus*	Echinacea*	Elder Berry Glycerite	Passion Flower*
Black Cohosh*	Echinacea Glycerite	Ginkgo*	Skullcap*
Chaste Tree Berry*	Eleuthero*	Hawthorn*	St. John's Wort*
		Kava	Valerian Root*

* Certified Organic by CCOF ** Made with Organic Ingredients

Simplers Botanicals Bulk Display Options

Space Saver Display

6 Extracts of Your Choice & One Rotary

Compact box mounts on your own shelf and holds one stainless steel rotary dispenser (\$300 value, free leasing) and six extracts.

Six one ounce calibrated dispenser heads (a one time lease fee of \$10.00 each with free replacements as needed).

Place as many units as you wish side-by-side

**Total cost of opening order -
\$714 for each 6-Extract Unit**



11.5"W x 10.5"D x 25"H

Upright Display

Top 12 Extracts with Two Rotaries

A slim upright display – holds 2 stainless steel rotary dispensers (\$600 value, free leasing) and 12 Extracts

12 one ounce calibrated dispenser heads (a one time lease fee of \$10.00 each with free replacements as needed)

Total cost of opening order - \$1,428



18"W x 18"D x 6.5'H

Both Display Options Include:

A free case of each 1, 2, and 4 ounce bottles (\$66.00 value)

Instructional signage & product information.

Each extract comes with a roll of custom labels providing the name of the extract, ingredients, and the recommended dosage.

SRP \$6.99 (51% profit margin)



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Affordable Naturals, LLC, Opposer/Plaintiff, v. NutraMarks, Inc., Applicant/Defendant.	Opposition No. _____ Appln. No. 86078760 Mark: SIMPLERS
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NOTICE OF OPPOSITION

Exhibit C



Natural

Organic

Gloss

Shimmer

[Home](#) [About Us](#) [Products](#) [Contact Us](#)


Simply Natural Lip Balm

Moisturize, refresh, renew and repair with our all natural, healing organic ingredients. Renew with organic olive oil, protect with beeswax and SPF, repair with Vitamin E. Always without parabens, sulfates, synthetic dyes, synthetic fragrances, phthalates or GMO's.



Original
[View Ingredients](#)

Original

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:
Organic palm oil,
beeswax, rosemary
extract, vitamin E



Acai Berry
[View Ingredients](#)

Acai Berry

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:
organic coconut oil,
beeswax, organic extra
virgin olive oil, flavor,
vitamin E acetate,
organic comfrey leaf,



Citrus
[View Ingredients](#)

Citrus

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:
Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,



Espresso
[View Ingredients](#)

Espresso

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:
Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,

lanolin, rosemary
extract, vitamin E, red
33 lake, blue 1 lake, iron
oxide

organic hemp seed oil,
rosemary extract,
vitamin E

organic hemp seed oil,
rosemary extract,
vitamin E



Fresh Mint
View Ingredients



Green Tea
View Ingredients



Iced Pear
View Ingredients

Fresh Mint

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),
Inactive Ingredients:
Organic palm oil,
beeswax, organic extra
virgin olive oil, essential
oil of spearmint, organic
hemp seed oil, rosemary
extract, vitamin E

Green Tea

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),
Inactive Ingredients:
Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,
organic hemp seed oil,
rosemary extract, vitamin
E

Iced Pear

Natural Moisturizer

Active Ingredients:
(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),
Inactive Ingredients:
Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,
organic hemp seed oil,
rosemary extract, vitamin
E



Lemon Grass
View Ingredients



Mint
View Ingredients



Pomegranate
View Ingredients



Tea Tree Mint
View Ingredients

Lemon Grass

Mint

Pomegranate

Tea Tree Mint

Natural Moisturizer

Active Ingredients:

(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:

Organic palm oil,
beeswax, organic extra
virgin olive oil, essential
oil of lemongrass,
organic hemp seed oil,
rosemary extract,
vitamin E

Natural Moisturizer

Active Ingredients:

(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:

Organic palm oil,
beeswax, organic extra
virgin olive oil, essential
oil of spearmint, organic
hemp seed oil, rosemary
extract, vitamin E

Natural Moisturizer

Active Ingredients:

(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:

Organic palm oil,
beeswax, organic extra
virgin olive oil,
flavor, organic hemp
seed oil, rosemary
extract, vitamin E

Natural Moisturizer

Active Ingredients:

Organic Palm Oil,
Beeswax, Organic Extra
Virgin Olive Oil, Organic
Tea Tree Oil, Organic
Hemp Seed Oil,
Rosemary Extract,
Vitamin E, Essential
Oil of Peppermint



Vanilla Mint
[View Ingredients](#)

Vanilla Mint

Natural Moisturizer

Active Ingredients:

(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:

Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,
essential oil of
peppermint, organic
hemp seed oil, rosemary
extract, vitamin E



Vanilla
[View Ingredients](#)

Vanilla

Natural Moisturizer

Active Ingredients:

(Purpose Sunscreen)
octinoxate (7.5%),
oxybenzone (3%),

Inactive Ingredients:

Organic palm oil,
beeswax, organic extra
virgin olive oil, flavor,
organic hemp seed oil,
rosemary extract, vitamin
E



Simply Organic Lip Balm

Our Simply Lip Balm has gotten even better with a certified organic option for our customers. Each variety has been carefully crafted using the finest premium quality organic Ingredients. This USDA certified organic lip balm glides on smooth and continues to moisturize long after the initial application. Always without parabens, sulfates, synthetic dyes, synthetic fragrances, pthalates or GMO's.



Original
View Ingredients

Original

Certified Organic

Active Ingredients:

Organic elaeis guineensis (palm) oil, organic cera alba (beeswax), organic extra virgin olea europaea (olive) oil, organic essential oil of mentha piperita (peppermint), organic cannabis sativa (hemp) seed oil, organic essential oil of mentha spicata (spearmint), tocopherol (vitamin E)



Mint
View Ingredients

Mint

Certified Organic

Active Ingredients:

Organic elaeis guineensis (palm) oil, organic cera alba (beeswax), organic extra virgin olea europaea (olive) oil, organic essential oil of menthe piperita (peppermint), organic cannabis sativa (hemp) seed oil, organic essential oil of menthe spicata (spearmint), tocopherol (vitamin E)



Coconut
View Ingredients

Coconut

Certified Organic

Active Ingredients:

Organic elaeis guineensis (palm) oil, organic cera alba (beeswax), organic extra virgin olea europaea (olive) oil, essential oil of menthe piperita (peppermint), organic cannabis sativa (hemp) seed oil, organic essential oil of menthe spicata (spearmint), tocopherol (vitamin E)



Green Tea
[View Ingredients](#)

Green Tea

Certified Organic

Active Ingredients:

Cera Alba (beeswax),
extra virgin olea
europaea (olive) oil,
cocos nucifera
(coconut) oil,
butyrospeumum parkii
(Shea butter),
theobroma cacao
(cocoa) seed butter,
natural flavor, cannabis
sativa (hemp) seed oil,
tocopherol (vitamin E),
camellia sinensis (green
tea) leaf extract



Mango
[View Ingredients](#)

Mango

Certified Organic

Active Ingredients:

Cera Alba (beeswax),
extra virgin olea
europaea (olive) oil,
cocos nucifera
(coconut) oil,
butyrospeumum parkii
(Shea butter),
theobroma cacao
(cocoa) seed butter,
natural flavor, cannabis
sativa (hemp) seed oil,
tocopherol (vitamin E),
magifera indica (mango)
fruit extract



Simply Gloss

This all natural, ultra shiny gloss lays on a sheer, sexy wash of color. Available in a variety of shades. Glides on easily and stays on longer. Simply shine lip gloss contains none of the following: parabens, sulfates, synthetic fragrances, synthetic dyes, petro-chemicals or phthalates.



Pink Passion
[View Ingredients](#)

Pink Passion

Luscious Lips

Active Ingredients:

Castor Oil, Sweet
Almond Oil, Beeswax,
Shea Butter, Mica, Food
Color, Natural Mint Flavor



Red Redemption
[View Ingredients](#)

Red Redemption

Luscious Lips

Active Ingredients:

Castor Oil, Sweet
Almond Oil, Beeswax,
Shea Butter, Mica, Food
Color, Natural Mint Flavor



Benevolent Berry
[View Ingredients](#)

Benevolent Berry

Luscious Lips

Active Ingredients:

Castor Oil, Sweet
Almond Oil, Beeswax,
Shea Butter, Mica, Food
Color, Natural Mint Flavor



Promiscuous Peach
[View Ingredients](#)

Promiscuous Peach

Luscious Lips

Active Ingredients:

Castor Oil, Sweet
Almond Oil, Beeswax,
Shea Butter, Mica, Food
Color, Natural Mint
Flavor



Nude Nirvana
[View Ingredients](#)

Nude Nirvana

Luscious Lips

Active Ingredients:

Castor Oil, Sweet
Almond Oil, Beeswax,
Shea Butter, Mica, Food
Color, Natural Mint
Flavor



Simply Shimmer

All natural slightly tinted lip shimmer replenishes with a luxurious sheen finish. Soften with shea butter, renew with organic olive oil, moisturize with beeswax, and protect with antioxidants. Formulated without parabens, sulfates, synthetic dyes, synthetic fragrances, phthalates and GMO's.



Copper Drop
View Ingredients

Copper Drop

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, red 6, red 7, red 40, iron oxide, titanium dioxide



Polished Pink
View Ingredients

Polished Pink

Shining Smiles

Active Ingredients:

Organic extra Virgin olive oil, beeswax, castor oil, shea butter, lanolin, mango butter, essential oil of peppermint, vitamin E, Rosemary extract. May contain: Mica, red 6, red 7, red 40, iron oxide, titanium dioxide



Ruby Red
View Ingredients

Ruby Red

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, red 6, red 7, red 40, iron oxide, titanium dioxide



Sparkling Wine
View Ingredients

Sparkling Wine

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, red 6, red 7, red 40, iron oxide, titanium dioxide



Champagne
View Ingredients

Champagne

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, iron oxide, titanium dioxide, carmine



Poli Rose
View Ingredients

Poli Rose

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, iron oxide, titanium dioxide, carmine



Sheer
View Ingredients

Sheer

Shining Smiles

Active Ingredients:

Organic Extra Virgin Olive Oil, Beeswax, Castor Oil, Shea Butter, Lanolin, Mango Butter, Essential Oil of Peppermint, Vitamin E, Rosemary extract, May contain: Mica, iron oxide, titanium dioxide, carmine

Our Products

Natural Lip Balm

Certified Organic Lip Balm

Lip Gloss

Lip Shimmer

"We bring organic products back down-to-earth by providing the first all-natural, premium quality, U.S.-made, eco-conscious personal care products offered on the market at a reasonable rate."



Exhibit 2

Mark W. Ford (#10659)
mford@mabr.com
Rachel Jacques (#13250)
rjacques@mabr.com
Maschoff Brennan
1389 Center Drive, Suite 300
Park City, UT 84098
(435) 252-1360,

Carl E. Christensen (*pro hac vice application pending*)
carl@clawoffice.com
Christensen Law Office PLLC
800 Washington Avenue North, Suite 704
Minneapolis, MN 55401
(612) 823-4427

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>NUTRACEUTICAL CORPORATION a Delaware corporation, and,</p> <p>NUTRAMARKS, INC., a Delaware corporation</p> <p>Plaintiffs and Counterclaim-Defendants,</p> <p>vs.</p> <p>AFFORDABLE NATURALS, LLC, a Minnesota limited liability company,</p> <p>Defendant and Counterclaim-Plaintiff.</p>	<p style="text-align: center;">AMENDED ANSWER AND AMENDED COUNTERCLAIMS FOR TRADEMARK INFRINGEMENT</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p> <p>Court File No.: 2:14-cv-00907-JNP-PMW</p> <p style="text-align: center;">Magistrate Judge Paul M. Warner</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Defendant Affordable Naturals, LLC, (“Affordable Naturals”) for its Answer to the First Amended Complaint of Plaintiffs Nutraceutical Corporations (“Nutraceutical”)

and NutraMarks, Inc. (“NutraMarks”), denies each and every allegation contained in the Complaint, except those allegations which are specifically admitted, qualified, or otherwise answered in this Amended Answer, as follows:

1. As to Paragraph 1 of Plaintiffs’ First Amended Complaint: Affordable Naturals denies that its products sold under its SIMPLY trademark violate Nutraceutical’s and Nutramarks’ rights and denies that its conduct constitutes trademark infringement and unfair competition. The remaining allegations contained in this paragraph are legal conclusions to which no response is required. To the extent that this paragraph contains further factual allegations, Affordable Naturals denies them.

2. As to Paragraph 2 of Plaintiffs’ First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

3. As to Paragraph 3 of Plaintiffs’ First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

4. As to Paragraph 4 of Plaintiffs’ First Amended Complaint: Admits

5. As to Paragraph 5 of Plaintiffs’ First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

6. As to Paragraph 6 of Plaintiffs’ First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

7. As to Paragraph 7 of Plaintiffs’ First Amended Complaint: Affordable Naturals denies that it has caused an injury to Plaintiffs. The remaining allegations in this

paragraph are legal conclusions to which no response is required. To the extent that this paragraph contains further factual allegations, Affordable Naturals denies.

8. As to Paragraph 8 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

9. As to Paragraph 9 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

10. As to Paragraph 10 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

11. As to Paragraph 11 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

12. As to Paragraph 12 of Plaintiffs' First Amended Complaint: Affordable Naturals affirmatively alleges that the NutraMarks' trademark application for SIMPLERS attached to Plaintiffs' First Amended Complaint as Exhibit 1 speaks for itself. To the extent that any of the allegations contained in this paragraph contradict the express language of the NutraMarks' trademark application, Affordable naturals denies the same.

13. As to Paragraph 13 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

14. As to Paragraph 14 of Plaintiffs' First Amended Complaint: Affordable Naturals affirmatively alleges that the NutraMarks' trademark application for SIMPLERS BOTANICALS attached to Plaintiffs' First Amended Complaint as Exhibit 2 speaks for itself. To the extent that any of the allegations contained in this paragraph contradict the

express language of the NutraMarks' trademark application, Affordable naturals denies the same.

15. As to Paragraph 15 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

16. As to Paragraph 16 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

17. As to Paragraph 17 of Plaintiffs' First Amended Complaint: Admits Affordable Naturals filed an application to register the mark SIMPLY with the USPTO on November 24, 2009 for "personal care products, namely lip balm, lip shimmers and sun block preparations."

18. As to Paragraph 18 of Plaintiffs' First Amended Complaint: Admits.

19. As to Paragraph 19 of Plaintiffs' First Amended Complaint: Is without sufficient information to admit or deny so therefore denies.

20. As to Paragraph 20 of Plaintiffs' First Amended Complaint: Admits.

21. As to Paragraph 21 of Plaintiffs' First Amended Complaint: Admits.

22. As to Paragraph 22 of Plaintiffs' First Amended Complaint: Affordable Naturals affirmatively alleges that the Notice of Opposition attached to Plaintiffs' Complaint as Exhibit 3 speaks for itself. To the extent that any of the allegations contained in this paragraph contradict the express language of the Notice of Opposition, Affordable naturals denies the same.

23. As to Paragraph 23 of Plaintiffs' First Amended Complaint: Affordable

Naturals affirmatively alleges that Nutraceutical's trademark application speaks for itself. To the extent that any of the allegations contained in this paragraph contradict the express language of the Notice of Opposition, Affordable naturals denies the same.

24. As to Paragraph 24 of Plaintiffs' First Amended Complaint: Affordable Naturals denies that any permission, license, or authorization to use Affordably Naturals' federally registered mark, SIMPLY, was required from Plaintiffs. Affordable Naturals denies any and all other allegations in this paragraph.

25. As to Paragraph 25 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

PLAINTIFFS' FIRST CAUSE OF ACTION
(Trademark Infringement Under § 43(a) of the Lanham Act)

26. As to Paragraph 26 of Plaintiffs' First Amended Complaint: This paragraph realleges facts for which further response is not required. To the extent that this paragraph contains factual allegations, Affordable Naturals denies them.

27. As to Paragraph 27 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

28. As to Paragraph 28 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

29. As to Paragraph 29 of Plaintiffs' First Amended Complaint: Appears to

state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

30. As to Paragraph 30 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

PLAINTIFFS' SECOND CLAIM FOR RELIEF
(Utah Truth in Advertising Act)

31. As to Paragraph 31 of Plaintiffs' First Amended Complaint: This paragraph realleges facts for which further response is not required. To the extent that this paragraph contains factual allegations, Affordable Naturals denies them.

32. As to Paragraph 32 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

33. As to Paragraph 33 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

34. As to Paragraph 34 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

35. As to Paragraph 35 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

PLAINTIFFS' THIRD CLAIM FOR RELIEF
(Declaratory Judgment of Trademark Invalidity)

36. As to Paragraph 36 of Plaintiff's First Amended Complaint: This paragraph realleges facts for which further response is not required. To the extent that this paragraph contains factual allegations, Affordable Naturals denies them.

37. As to Paragraph 37 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

38. As to Paragraph 38 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

39. As to Paragraph 39 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

40. As to Paragraph 40 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

FOURTH CLAIM FOR RELIEF
(Trademark Cancellation Pursuant to 15 U.S.C. § 1119)

41. As to Paragraph 41 of Plaintiff's First Amended Complaint: This paragraph realleges facts for which further response is not required. To the extent that this paragraph contains factual allegations, Affordable Naturals denies them.

42. As to Paragraph 42 of Plaintiffs' First Amended Complaint: Appears to

state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

43. As to Paragraph 43 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

44. As to Paragraph 44 of Plaintiffs' First Amended Complaint: Appears to state a legal conclusion for which no response is required. To the extent a response is required, Affordable Naturals denies.

PLAINTIFFS' PRAYER FOR RELIEF

45. As to Paragraphs 1-8 that follow Paragraph 44 of the First Amended Complaint; these paragraphs are a prayer for relief to which no response is required. To the extent that these paragraphs contain factual allegations, Affordable Naturals denies them.

AFFIRMATIVE DEFENSES

Upon information and belief, based on the information or lack thereof now available to Defendant Affordable Naturals, the following affirmative defenses may apply:

1. The First Amended Complaint fails to state a claim upon which relief can be granted.
2. The claims made in the First Amended Complaint are barred, in whole or in part, by applicable statutes of limitations.
3. The claims made in the First Amended Complaint are barred by laches.

4. The claims made in the First Amended Complaint are barred by the doctrines of waiver, implied consent, acquiescence, and estoppel.

I. AMENDED COUNTERCLAIMS

Defendant Affordable Naturals, LLC (“Defendant” or Counterclaim-Plaintiff”) assert the following counterclaims against Plaintiffs Nutraceutical Corporation and NutraMarks, Inc. (collectively, “Counterclaim-Defendants”):

II. PARTIES

1. Counterclaim-Plaintiff Affordable Naturals, LLC is a Minnesota limited liability company with its principal place of business at 6401 West 106th Street, Bloomington, Minnesota.

2. Upon information and belief, Counterclaim-Defendant Nutraceutical Corporation is a Delaware Corporation having its principal place of business at 1400 Kearns Boulevard, Park City, Utah 84060.

3. Upon information and belief, Counterclaim-Defendant NutraMarks, Inc. is a Delaware Corporation having its principal place of business at 1500 Kearns Boulevard, Park City, Utah 84060.

III. JURISDICTION AND VENUE

4. These counterclaims arise under the Lanham Act 15 U.S.C. §§ 1051 *et seq.*, and the provisions of the Federal Declaratory Judgment Act, as well as the laws of the State of Utah. The jurisdiction of this Court is proper under 15 U.S.C. §§ 1051 *et seq.*, and 28 U.S.C. §§ 1331, 1332, 1367 and 2201-02.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

IV. JURY TRIAL DEMAND

6. Plaintiffs request a trial by jury on all issues so triable. U.S. Const. amend.
7. Fed.R.Civ.P. 38.

V. FACTS

Affordable Naturals is the Owner of the SIMPLY® Mark, Which Has Significant Appurtenant Goodwill in the Eyes of the Relevant Consumer

7. Affordable Naturals and its predecessors have used lip care and lip-related products under the SIMPLY® Mark continuously in interstate commerce since at least as early as August 1, 2009.

8. Affordable Naturals is the owner of the following trademark registrations for the SIMPLY® mark, which is registered on the Principal Register of the United States Patent and Trademark Office:

Trademark	Registration No.	Registered Goods
SIMPLY	3935337	Personal care products, namely lip balm, lip shimmers and sun block preparations

(USPTO registration of the SIMPLY® mark is attached as **Exhibit A**.)

9. Affordable Naturals has undergone significant expense developing, marketing, policing, and maintaining the SIMPLY® brand and appurtenant goodwill since 2009. Affordable Naturals has sold millions of units of its branded lip balms, lip-glosses, lip shimmers and other lip-related products since 2009 through distribution relationships with Walgreens, Target, and other national retailers. Since 2009, it has expended over one million dollars in product development, marketing, and legal services

to develop, grow, and protect its SIMPLY® mark.

10. Affordable Naturals is a leading manufacturer, marketer, distributor, and seller of natural, organic, and environmentally-friendly lip balms, lip glosses, lip shimmers, and other lip-related products.

11. Affordable Naturals sells lip balms, lip glosses, lip shimmers, and lip-related products under the SIMPLY® mark.

12. Affordable Naturals manufactures, markets, distributes, and sells its products under the prolific SIMPLY® brand through various channels of trade including convenience stores, retailers, branded national chains, online sellers such as Amazon.com, and direct-to-consumer online sales.

13. Affordable Naturals' mission is as follows: "We bring organic products back down-to-earth by providing the first all-natural, premium quality, U.S-made, eco-conscious personal care products offered on the market at a reasonable rate."

14. Affordable Naturals' goods consist of natural and organic ingredients, such as olive oil and beeswax. Affordable Naturals maintains its standards to make products that never contain parabens, sulfates, synthetic dyes, synthetic fragrances, phthalates or GMOs. Affordable Naturals maintains some of its goods to meet certain quality standards to be certified "USDA ORGANIC."

15. Affordable Naturals has also spent extensive resources and expense developing trade dress that speaks to its mission and the "natural" and "organic" nature of its goods, which is as follows:



16. Affordable Naturals also markets and sells its goods on the Internet. Affordable Naturals' website for the SIMPLY® brand goods is located at the <simplylipbalm.com> domain name. (Printouts of the Simply website are attached as **Exhibit B.**)

17. Because of Affordable Naturals' substantial efforts of brand development, the relevant consuming public has an expectation of certain quality appurtenant to the SIMPLY® mark. This expectation of quality has inured to the SIMPLY® mark as secondary meaning in the form of significant and extensive goodwill, distinguishing Affordable Naturals' lip balms, lip glosses, lip shimmers, and lip-related products from those of their competitors.

Counterclaim-Defendants' Goods Infringe on Affordable Naturals' Rights in the SIMPLY® Mark and Constitute Unfair Competition.

18. Despite having actual knowledge of Affordable Naturals' exclusive rights in the SIMPLY® mark, Counterclaim-Defendants willfully infringed Affordable Naturals' rights in the SIMPLY® mark and violated Affordable Naturals' intellectual property rights through the marketing, promotion, advertisement and sale of its own line of beauty, skin care and personal care products including lip balms, and other body and face-related products in connection with the designation "SIMPLERS" (the "Infringing Mark"), a designation almost identical to Affordable Naturals' SIMPLY®

mark.

19. Counterclaim-Defendants manufacture, market, distribute and sell their lines of lip balms, lotions, and other body and face-related products, including the lip-related product “Simplers Botanicals Lip Clarity,” in connection with the Infringing Mark (collectively, the “Infringing Products”) via the internet.

20. On September 30, 2013, almost four years after Affordable Naturals’ filed its application with the USPTO for its SIMPLY® mark, Nutraceutical and NutraMarks filed applications to register the SIMPLERS mark.

21. On October 7, 2104, Affordable Naturals filed a Notice of Opposition to NutraMarks’ attempted registration of an infringing mark because SIMPLERS so resembles Affordable Natural’s federally registered SIMPLY® mark that it is likely to cause confusion, mistake or deception.

22. Counterclaim-Defendants had prior knowledge of Affordable Naturals’ SIMPLY® mark. Counterclaim-Defendants intended to trade upon the coattails of Affordable Naturals’ goodwill.

23. With actual knowledge of a likelihood of confusion with Affordable Naturals’ mark by virtue of Affordable Naturals’ registration of the SIMPLY® mark with the USPTO, Counterclaim-Defendants continued to use the SIMPLERS mark.

24. Counterclaim-Defendants’ actions are clearly intended to confuse consumers as to the source or origin of their SIMPLERS products and create a false association between Counterclaim-Defendants’ SIMPLERS product and Affordable Naturals’ SIMPLY® brand product in the minds of the consuming public.

*Counterclaim-Defendants' Misappropriation of
Affordable Naturals' Intellectual Property is Willful*

25. Counterclaim-Defendants adopted and commenced use of, use and plan to continue to use the Infringing Mark with the intent and purpose of trading upon the extensive goodwill built up by Affordable Naturals in its prolific SIMPLY® mark and to reap the benefits of the years of effort invested by Affordable Naturals and its predecessors to create the SIMPLY® mark as a symbol the source or origin for Affordable Naturals' goods in the eyes of the consuming public.

26. Counterclaim-Defendants have engaged and continue to engage in deliberate and willful infringement designed to confuse customers as to the source or origin of the Infringing Products, including "Simplers Botanicals Lip Clarity," and trade upon Affordable Naturals' valuable intellectual property, goodwill and reputation.

27. Counterclaim-Defendants have refused to cease their infringing conduct despite being put on notice of Affordable Naturals' exclusive rights in the SIMPLY® mark.

28. Prior to Counterclaim-Defendants filing their Complaint, Affordable Naturals' advised them of Affordable Naturals' exclusive rights in the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products and that Counterclaim-Defendant's use of SIMPLERS in connection with these products constitutes trademark infringement and unfair competition in violation of federal, state and common law.

29. To date, Counterclaim-Defendants continue to promote and foster

consumer confusion and unfairly compete with Affordable Naturals by marketing, promoting, advertising, and selling its lip balms, other lip-related products under the confusingly similar designation “SIMPLERS”.

30. Counterclaim-Defendants have adopted, commenced use of and are using and planning to market, promote, advertise, and sell the infringing SIMPLERS products with the intent and purpose of trading on the extensive goodwill built up by Affordable Naturals in the federally registered and exclusive SIMPLY® mark and to reap the benefits of years of effort and investment by Affordable Naturals to create public recognition of Affordable Naturals’ SIMPLY® mark and the products sold appurtenant to that mark.

31. Counterclaim-Defendants’ conduct is intentionally fraudulent, malicious, willful, and wanton.

32. Counterclaim-Defendants’ acts of imitation have been committed with knowledge that such imitation is intended to be used to cause confusion or mistake, or to deceive.

*If Counterclaim-Defendants have senior rights in their mark,
their rights are limited to their market penetration*

33. By virtue of Affordable Naturals’ registration of the SIMPLY® mark, upon the time of the registration of the SIMPLY mark, Counterclaim-Defendants’ rights become frozen and are limited only to those territories where its trade had reached before Affordable Naturals’ registration of the SIMPLY ® mark.

34. Any purported market activities by Counterclaim-Defendants regarding the

SIMPLERS mark must be more than de minimus for Counterclaim-Defendants to assert senior rights in any market.

35. Also, Affordable Naturals' SIMPLY® mark is only sold appurtenant to lip balms, lip glosses, lip shimmers and other lip-related products.

36. Upon information and belief, Counterclaim-Defendants used the SIMPLERS mark on its lip related product "Simplers Botanicals Lip Clarity."

37. Upon information and belief, lip balms, lip glosses, lip shimmers and other lip-related products are not natural areas of Counterclaim-Defendants' expansion of the SIMPLERS mark for any goods for which they may have senior rights.

COUNT I
Federal Trademark Infringement (15 U.S.C. § 1114(1))

38. Affordable Naturals repeats and realleges each and every allegation contained in the above Counterclaim paragraphs.

39. Counterclaim-Defendants' actions infringe Affordable Naturals' exclusive rights in its federally registered SIMPLY® mark for lip balms, lip glosses, lip shimmers and other lip-related products.

40. Counterclaim-Defendants' conduct is likely to cause confusion, mistake, or deception and constitutes trademark infringement, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

41. Counterclaim-Defendants' actions are with full knowledge of Affordable Naturals' long and extensive prior use of the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

42. Counterclaim-Defendants' use the Infringing Mark on its products, including its "Simplers Botanicals Lip Clarity" product. Counterclaim-Defendants' use of SIMPLERS in connection with these products constitutes trademark infringement.

43. Counterclaim-Defendants' conduct is causing immediate and irreparable injury to Affordable Naturals and to their goodwill and reputation, and will continue both to damage Affordable Naturals and to confuse the public unless enjoined by this Court. Counterclaim-Plaintiff has no adequate remedy at law.

COUNT II
Federal Unfair Competition (15 U.S.C. § 1125(a))

44. Affordable Naturals repeats and realleges each and every allegation contained in the above Counterclaim paragraphs.

45. Affordable Naturals is the valid owner of the SIMPLY® mark, which is entitled to full recognition and protection under federal trademark law.

46. Counterclaim-Defendants' actions constitute false designation of origin and are likely to cause confusion, mistake, or deception among the consuming public.

47. Counterclaim-Defendants' actions have been undertaken with full knowledge of Affordable Naturals' long and extensive prior use of the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

48. Counterclaim-Defendants' acts are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

49. Counterclaim-Defendants' conduct has caused and will continue to cause irreparable injury to Affordable Naturals unless enjoined by this Court. Counterclaim-

Plaintiff has no adequate remedy at law.

COUNT III
Common Law Unfair Competition

50. Affordable Naturals repeats and realleges each and every allegation contained in the above paragraphs.

51. Counterclaim-Defendants were aware of Affordable Naturals' prior use of the SIMPLY® mark, and undertook the actions described in this complaint in disregard of Affordable Naturals' rights in the SIMPLY® mark in connection with lip balms, lip glosses, lip shimmers and other lip-related products.

52. Counterclaim-Defendants' infringing conduct has resulted in the misappropriation of and trading upon Affordable Naturals' goodwill and business reputation at Affordable Naturals' expense and at no expense to Counterclaim-Defendants. The effect of Counterclaim-Defendants' misappropriation of the goodwill symbolized by Affordable Naturals' SIMPLY® mark is to unjustly enrich Counterclaim-Defendants, damage Affordable Naturals and confuse and deceive the public.

53. Counterclaim-Defendants' conduct constitutes unfair competition with Affordable Naturals, all of which has caused and will continue to cause irreparable injury to Affordable Naturals goodwill and reputation in the marketplace unless enjoined by this Court. Affordable Naturals has no adequate remedy at law.

COUNT IV
Utah Truth in Advertising Act
(Utah Code Ann. § 13-11a-3, *et seq.*)

54. Affordable Naturals repeats and realleges each and every allegation

contained in the above Counterclaim paragraphs.

55. By reason of the acts and practices set forth above, Counterclaim-Defendants have and is engaged in deceptive trade practices in the course of their business, in violation of Utah Code Ann. § 13-11a-3, *et seq.*

56. By reason of Counterclaim-Defendants' acts alleged herein, Affordable Naturals has and will suffer damage to its business, reputation and good will, and loss of sales and profits Affordable Naturals would have made but for Counterclaim-Defendants' acts.

57. Unless restrained and enjoined by the Court, Counterclaim-Defendants will continue these deceptive trade practices or acts, deceiving the public and causing immediate and irreparable damage to Affordable Naturals. Affordable Naturals has no adequate remedy at law.

58. Affordable Naturals is entitled to an award of attorneys' fees pursuant to § 13-11a-1, *et seq.*

VI. RELIEF SOUGHT

WHEREFORE, Affordable Naturals prays for judgment against Counterclaim-Defendants as follows:

1. A declaration that Affordable Naturals does not infringe and has not infringed Nutraceutical's and NutraMarks' trademark detailed in Plaintiffs' First Amended Complaint.
2. That Nutraceutical and NutraMarks take nothing by way of their First Amended Complaint.

3. Permanently enjoining and restraining Nutraceutical and NutraMarks, their officers, agents, servants, employees, successors, and assigns and all of those in active concert or participation with them, from:

- a) Using any false description or designation of origin or representation which can, or is likely to, lead the trade or public, or individual members thereof, to believe that any product manufactured, imported, advertised, distributed and/or sold by Affordable Naturals is in any manner associated or connected with Nutraceutical or NutraMarks is sold, licensed, sponsored, or approved by Affordable Naturals; and
- b) Engaging in any other activity constituting an infringement of Affordable Naturals' trademark rights.

4. Entering an order:

- a) Finding that Nutraceutical and NutraMarks has infringed upon Affordable Naturals' trademark rights;
- b) Directing that Nutraceutical and NutraMarks turn over for impoundment and eventual destruction all products, packages, and material in their possession or control which violate Affordable Naturals' trademark rights;
- c) Directing Nutraceutical and NutraMarks to recall all of its products infringing Affordable Naturals' trademark rights;
- d) Directing Nutraceutical and NutraMarks to, within thirty days after service of notice of the entry of judgment, file with the Court and serve upon Affordable Naturals' counsel a written report under oath setting forth in detail the manner in

which Nutraceutical and NutraMarks has complied with the Court's order.

- e) Directing that Nutraceutical and NutraMarks be required to pay Affordable Naturals actual damages of all of Nutraceutical's and NutraMarks' profits and Affordable Naturals' lost profits sustained as a consequence of Nutraceutical's and NutraMarks' infringement of Affordable Naturals' trademark;
- f) Awarding to Affordable Naturals the costs of this action, together with reasonable attorneys' fees; and
- g) Awarding to Affordable Naturals such further relief as the Court may deem just and proper.

MASCHOFF BRENNAN

October 16, 2015

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October 16, 2015

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